

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JAMES E. MOSS,)	
)	
Petitioner,)	
)	
v.)	CASE NO. 2:15-CV-87-WKW
)	[WO]
UNITED STATES OF)	
AMERICA,)	
)	
Respondent.)	

ORDER

On April 13, 2017, the Magistrate Judge filed a Recommendation. (Doc. # 11.) On April 28, 2017, Petitioner James E. Moss filed objections. (Doc. # 12.) The court has conducted an independent and *de novo* review of those portions of the Recommendation to which objection is made. *See* 28 U.S.C. § 636(b). The court has also considered the record in this case and in the related criminal case, *United States v. Moss*, Case No. 2:11-CR-26-MEF.

In his objection, Petitioner presents unsworn statements of fact in an attempt to undercut the Magistrate Judge's findings of fact and conclusions of law. The court notes that several of Petitioner's unsworn statements are contrary to the uncontradicted evidence. However, even if Petitioner's factual representations that are not contrary to the uncontradicted evidence are as he represents them to be, those facts still would not give rise to a finding of nonharmless error in the

Recommendation.

Petitioner submitted evidence that a video exists showing that Aveda Jenkins entered a stolen social security number into a computer and that another video shows that Jenkins stole a tax refund card by stuffing it into her purse after checking to ensure that no one was watching her. (Doc. # 8 at 10, 13.) However, as the Magistrate Judge pointed out (Doc. # 11 at 6-7), even if such footage exists and Moss's trial attorney was timely aware of it, Petitioner still has not demonstrated that the footage would have been reasonably likely to affect the outcome of his trial or that the failure to introduce the footage into evidence constituted ineffective assistance of counsel. The remainder of Petitioner's arguments are adequately addressed in the well-reasoned Recommendation.

Accordingly, it is ORDERED as follows:

1. The objections of Petitioner James E. Moss (Doc. # 12) are OVERRULED.
2. The Recommendation (Doc. 11) is ADOPTED.
3. The 28 U.S.C. § 2255 motion (Doc. # 1) filed by Petitioner James E. Moss is DENIED.
4. This action is DISMISSED with prejudice.

Final judgment will be entered separately.

DONE this 1st day of June, 2017.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE